

Since the enactment of the Central Valley Project Improvement Act (CVPIA), there has been a great deal of discussion and debate regarding the proper interpretation and implementation of Section 3406(b)(2).

Section 3406(b)(2) dedicates 800,000 acre-feet of Central Valley Project yield to be used: (1) for the purpose of fish, wildlife and habitat restoration; (2) to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and (3) to help meet obligations imposed under the federal Endangered Species Act on the Project after October 30, 1992.

A complex issue associated with this provision involves implementation of the phrase "800,000 acre-feet of Central Valley Project yield." On one side of the debate is the argument that Congress intended to reduce CVP deliveries on an annual basis by 800,000 acre-feet, except in critical years when deliveries would be reduced by 600,000 acre-feet. The counter-veiling argument is, however, that the dedication is a reduction in yield, not deliveries and, therefore, the actual amount of water available to meet the objectives of 3406(b)(2) in any one year may be more or less than 800,000 acre-feet, depending on the hydrologic conditions. It is the later view that we believe to be correct. The following is an explanation of how one would implement the provision.

Section 3406(b)(2) specifically requires the Secretary of the Interior to "dedicate and manage annually 800,000 acre-feet of Central Valley Project yield." Central Valley Project yield is further defined by the statute as "the delivery capability of the Central Valley Project during the 1928-1934 drought period" after fishery, water quality and other flow and operational requirements imposed on the Project prior to enactment of the CVPIA have been met.

Key to the proper interpretation of this section are the phrases "delivery capability" and "during the 1928-1934 drought." Based upon the plain language of Section 3406(b)(2) Congress was dedicating the 800,000 acre-feet of water from the yield of the Project, not annual deliveries. The congressional definition of yield was intended by Congress as a "term of art" and was premised upon the traditional concept of yield used by Reclamation to determine the quantity of water available for water service contracts. Reclamation developed the yield concept to assist in cost benefit accounting. The most recent example, associated with the CVP, of Congress' familiarity with the meaning of this term was as part of the studies and the technical documents associated with the Coordinated Operations Agreement and its authorization by Congress.

Reclamation has customarily based its CVP yield calculation on the assumption that annual allocation of the available water during the critical seven-year period (1928-1934) would be based upon a shortage criteria that resulted in "empty reservoirs" at the end of that period. An "empty reservoir" is defined as the minimum power pool. The dry-year allocation (the shortage in any given year) for the CVP has historically for planning purposes been looked at as a 100% reduction to agriculture over the seven-year period with a maximum reduction in any one year of 25%.

Thus, by relying on Reclamation's traditional concept of yield, I believe that Congress intended Reclamation and the Fish and Wildlife Service to use the same analytical process in determining how to manage the 800,000 acre-foot dedication in Section 3406(b)(2). Specifically, the analysis would proceed as follows:

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1. Fish and Wildlife should identify what the fish needs are from a biological basis. These management determinations should be made without regard to the 800,000 acre-feet of water. The various uses identified by Fish and Wildlife should then be prioritized.
2. Simultaneously, Reclamation should begin to perform its analysis beginning with a determination of "base" hydrology for the 1928-1934 period.
3. Operational constraints associated with the physical facilities must then be identified and accounted for in the study. For instance, Reclamation must identify such things as reservoir and conveyance capacity.
4. After the physical limitations of the Project have been properly identified, Section 3406(b)(2) requires Reclamation to also add to the baseline the legal obligations imposed by agreements, licenses and permits issued prior to the enactment of the CVPIA.
5. From this initial "base-yield" Reclamation should then calculate the reduction in yield caused by the "additional" CVPIA-related water requirements for the Trinity River and for the wildlife refuges. This results in a "net-base yield" from which to begin analyzing the various management options or uses identified by the Fish and Wildlife Service.
6. Through an iterative process using base-yield studies Reclamation should calculate the degree to which a particular requirement, imposed for the benefit of fish and wildlife, will theoretically reduce yield by comparing project operations with and without the obligation during the seven-year drought period. Additional management options or uses would continue to be implemented, in order of priority, to be imposed upon the Project until there is a reduction in yield of 800,000 acre-feet in the three dry years of the critical seven-year period and 600,000 acre-feet in the four critical years. The specific set of management options that can be met using this water define the maximum obligation that can be mandated under Section 3406(b)(2). This set of management options can be changed but only

prior to the beginning of the water year and only after the same base yield analysis has been performed.

Under actual operating conditions, implementation of these management options will not necessarily reduce the delivery capability of the CVP to its water service contractors by 800,000 acre-feet. Other than the 1928-1934 period, it may be possible to meet the set of identified management options with less than 800,000 acre-feet.

7. After defining Reclamation's maximum obligation under Section 3406(b)(2), Reclamation may also examine its operations to identify other water management opportunities that will enable it to meet additional fish and wildlife management options, provided the changes in operation identified do not result in any reduction in yield.

8. Finally, in accordance with the CVPIA, implementation of any remaining management options are to be met through the acquisition by Reclamation of supplemental water.